IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 4468 of 2003

Between:

G.Subba Rao son of Musalaiah, 46 yrs,

Ex.ALM, D.7, Section, Operation, APSPDCL,

Guntur, Guntur district, r/o 1-387/2, 2nd lane

Gujjanagulla, Guntur.

..... PETITIONER

AND

1.The Chief General Manager/HRD

APSPDCL, Tirupathi.

2. The Superintendent Engineer, Operation

Circle, Southern Power Distribution Company

of A.P. Ltd., Guntur.

3. The Divisional Engineer, Elecrical,

Operation, APSPDCL, Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the impugned Memo No.DEE/O/GNT/JAO/Adm/D.No.53/02, dated 24-01-2002 issued by the 3rd respondent and Memo.
No. SE/O/GNT/Adm/C3/D.No.739/02, dated 22-07-2002 issued by the 2nd respondent and Memo. No. CGM/HRD/DS/AS.III/PO(DC)/D.No.1356/02, dated 21-11-2002 by the 1st respondent as illegal, arbitrary and unconstitutional and set aside the same, (ii) consequently direct the respondents to reinstate the petitioner into service duly granting all other consequential service benefits.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH

Counsel for the Respondents: MR.SAMINENI KISHORE, STANDING COUNSEL

The Court made the following:

ORDER

Heard Sri P.V.Krishnaiah, learned counsel appearing for the petitioner and also Sri Samineni Kishore, learned Standing Counsel appearing for the respondents.

The petitioner who has been working as Assistant Line Man (ALM) filed this Writ Petition *inter alia* seeking to assail the impugned orders dated 24-01-2002 passed by the 3rd respondent, memo dated 22-07-2002 of the 2nd respondent and also another memo dated 21-11-2002 of the 1st respondent herein as illegal.

The main grievance of the petitioner is that he was initially appointed as Junior Lineman. He belongs to Scheduled Caste. In fact he was engaged as a Casual Labour on 16-06-1978 for quite some time. Thereafter he has completed his elementary education at Repalle. But due to domestic problems, his education was not completed. Therefore, he undertook private study of 10th class through a private school and he was sponsored for SSC examination through Z.P.

School, Medikonduru. However, he could not go through the same successfully. At the time of absorption, he was directed to produce the certificate in support of his age. Therefore, he obtained a Transfer Certificate from the School at Medikonduru. During the verification done by the respondents, it was came to the light that the said certificate is bogus one and ultimately basing on the Vigilance report, an enquiry was conducted by appointing an Enquiry Officer. During the enquiry, the petitioner appeared before the Enquiry Officer. But he was not heard by the authorities to prove or disprove the correctness of the said certificate. Basing on the enquiry report and after following a show cause notice, the petitioner was dismissed from service. Even though he filed representations, the same were not properly considered and ultimately the appeal filed by the petitioner was also dismissed. Hence the Writ Petition.

Mr.P.V.Krishnaiah, learned counsel appearing on behalf of the petitioner submits that there was no proper enquiry at all and the burden casts on the respondents to prove that the Transfer Certificate produced by the petitioner is a bogus one.

The learned Standing Counsel appearing on behalf of the respondents submits that the petitioner is responsible for the lapses and he could as well obtain the SSC certificate not only from the school, but also from the other school where he studied. Since no such attempt has been made, he cannot take any advantage.

Having considered the submissions made and also on perusal of the record, the question which falls for consideration is whether the impugned action of removing the petitioner from service is valid?

There is no dispute of the facts as mentioned above. The only aspect which has to be seen is whether there is any proper proof in regard to the Transfer Certificate which has relied on by the petitioner. No step was taken prior to

commencement of the enquiry. The respondents have conducted Vigilance Enquiry to which the petitioner is neither a party nor any opportunity was given to the petitioner to prove that the said certificate is not a bogus one. However no Vigilance report has been supplied to the petitioner and such Vigilance report cannot form part of enquiry nor can also become any valid basis for any finding on merits. Necessarily it casts on the School authorities to prove that the certificate is bogus or correct. Admittedly, no steps have been taken by the respondents herein to summon anybody of the School authorities to show that the certificate is bogus and no opportunity has also been given to the petitioner to rebut the same or even to cross-examine in the event of any such production. On a reading of the entire order, it shows that the finding is squarely based upon the Vigilance report and not on any other independent material or the evidence produced on behalf of the respondents. In fact, the order itself reads as follows:

> "Thereby, when the certificate (i.e.,) Transfer Certificate produced by the charged employee which was only evidence for his age, qualification and caste got verified by the Divisional Engineer/O/Guntur through Vigilance Department and fond to be "not genuine". This implies knowingly or unknowingly the charged employee has committed a huge mistake and deceived the department and finally requesting to save him as he comes from a S.C. Community, consists of four grown up children and job is the only source for his livelihood, is not correct."

From the above, it is clear that the very basis for which the respondents sought to proceed is totally not correct and could not be a valid one. As already pointed out, there has to be a proper enquiry and then only any action can be taken. In view of the same, it has to be held that the entire proceedings are totally vitiated apart from being perversed.

In the circumstances, the Writ Petition is accordingly allowed. All the impugned orders are set aside. The respondents are directed to conduct fresh enquiry after giving notice and opportunity to the petitioner and pass orders on merits in accordance with law. No costs.

17-02-2005.

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Thursday, the Seventeenth day of February, 2005.

Asst.Registrar

To

1.The Chief General Manager/HRD

APSPDCL, Tirupathi.

2. The Superintendent Engineer, Operation

Circle, Southern Power Distribution Company

of A.P. Ltd., Guntur.

3. The Divisional Engineer, Elecrical,

Operation, APSPDCL, Guntur.

4. 2 C.D. copies.